

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) A1019/20268	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name Martin L. Faigus		Application Number 09/778,325	Filed 02/07/2001
First Named Inventor Bruce Marks		Art Unit 1774	
Examiner L. D. Ferguson			

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

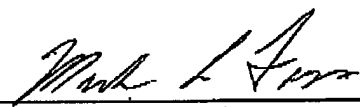
I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/98)

☒ attorney or agent of record.
Registration number _____

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____


 Signature
Martin L. Faigus
 Typed or printed name
(215 567-2010)
 Telephone number
1/19/06
 Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☒ *Total of **2** forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**RECEIVED
CENTRAL FAX CENTER****JAN 19 2006****PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
PATENT EXAMINING OPERATION**

First Named Inventor: Bruce Marks

Serial No: 09/778,325

Group Art Unit: 1774

Filed: February 7, 2001

Examiner: Lawrence D. Ferguson

Att. Docket No.: A1019/20268

Confirmation No.: 4861

For: METALLIZABLE WHITE OPAQUE FILMS, METALLIZED FILMS MADE
THEREFROM AND LABELS MADE FROM THE METALLIZED FILMS**PRE-APPEAL BRIEF REQUEST FOR REVIEW**Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REMARKS

Applicant requests review of the Non-Final rejections of Claims 1, 3, 11, 14, 28 and 31 – 33, which are set forth in the most recent Non-Final Office Action of December 1, 2005. These claims are set forth in the Amendment that was mailed to the United States Patent and Trademark Office on September 12, 2005. The filing of the Notice of Appeal and this Pre-Appeal Brief Request for Review is timely because the claims under rejection have been rejected in at least two (2) Office Actions.

Claims 1 and 28 are the only independent claims in this application, and both claim a white opaque plastic label having a metal layer on the outer surface. Both independent claims specify that the label is a multilayer structure having an internal core layer and opposed outer skin layers that are thinner than the core layer. Both claims specify that one of the outer skin layers includes at least 25% to about 50%, by weight, based on the weight of that outer layer, of a void-creating additive therein and that an aqueous cold glue adhesive is on the outer surface of that voided-skin layer. Both claims further specify that the other skin layer is free of a void-creating additive and includes a metal

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layer on its outer exposed surface.

Claim 3 is dependent upon claim 1 and specifies that the void-creating additive is calcium carbonate.

Claim 11 is dependent upon claim 1 and describes the most preferred embodiment in which the internal core layer is free of void-creating additives.

Claim 12 is dependent upon claim 1 and sets forth preferred thickness dimensions of the metal layer, the core layer and each of the opposed outer skin layers.

Claim 14 is dependent upon claim 1 and specifies that the label is a biaxially oriented polyolefin film.

Claim 31 is the only claim dependent upon claim 28 and specifies that the core layer is adhered to the first and second outer layers.

BRIEF SUMMARY OF PROSECUTION HISTORY

In an amendment mailed to the United States Patent and Trademark Office on September 30, 2004, applicant presented, for consideration, claims 1, 3, 11, 12, 14, 17 and 28 – 33. Dependent claims 17 and 30 are essentially of the same scope appealed claims 1 and 28.

In an Advisory Action mailed from the United States Patent and Trademark Office on November 1, 2004, the Examiner refused to consider the latter-identified amendment based upon his position that it raised new issues for consideration on appeal.

Applicant responded by pointing out that the amendment filed on September 30, 2004, was in response to a Non-Final Office Action, and therefore, should have been entered and acted upon.

The Examiner agreed, and on February 11, 2005, rendered a further Non-Final Office Action rejecting all of the pending claims as being unpatentable over Li et al. U.S. Patent No. 6,761,969.

Applicant responded by pointing out that the Li et al. '969 patent was not a reference against

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this application because its effective filing date was later than the effective filing date (i.e., the provisional application filing date) of this application.

The Examiner agreed and on June 13, 2005, again rendered a Non-Final Office Action in which claims 1, 3, 11, 12, 14, 28, 29 and 31 – 33 were rejected. However, pending claims 17 and 30, which are substantially identical to appealed claims 1 and 28, were objected to as being based upon rejected independent claims. The claims rejected in this latter Office Action were rejected based upon Bourdelais et al. U.S. Patent No. 6,472,034.

Although applicant disagreed with the rejections based upon the Bourdelais et al. '034 patent, it decided to accept objected-to-claims 17 and 30 by appropriately amending the two independent claims; namely, claims 1 and 28, respectively.

On December 1, 2005, the Examiner again entered a Non-Final Office Action in which all of the claims were rejected based upon the combination of Bourdelais et al. U.S. Patent No. 6,472,034 in view of newly cited Touhsaent U.S. Patent No. 6,013,353, or in view of Squier et al. WO 02/059860.

This Pre-Appeal Brief Request for Review is being filed with respect to these latter-two rejections.

ARGUMENTS/REMARKS

Neither the Bourdelais nor the Touhsaent '353 patent teach or suggest significant features specified in independent claims 1 and 28.

Specifically, the combination specified in both independent claims requires that one of the outer skin layers include 25% to about 50%, by weight, of a void-creating additive, and that this skin layer include an aqueous cold glue adhesive on it to adhere the label to a container. Both claims require that the other skin layer be free of a void-creating additive and that it include a metal layer on

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its outer surface.

In distinction to claims 1 and 28, the Bourdelais '034 patent teaches a laminate construction having a voided core layer and non-voided outer skin layers. In fact, the Examiner acknowledges this teaching in paragraph 3 of the most recent Office Action, wherein he states:

“The core should be from 15 to 95% of the total thickness and the non-voided skin(s) should be 5 to 85% of the sheet (column 9, lines 1 – 8 [of Bourdelais]).” (emphasis added)

Bourdelais only teaches including a void-creating additive in the internal core layer. Moreover, Bourdelais does not suggest including a metal layer on any skin layer, let alone a non-voided skin layer.

Thus, the Bourdelais '034 patent is substantially deficient in several respects, as follows:

1. It does not disclose the inclusion of a skin layer that is heavily voided (e.g., 25% to about 50%, by weight) for any purpose.
2. It does not disclose the inclusion of a cold glue adhesive on a heavily-voided skin layer.
3. It does not disclose the inclusion of a metal layer on a non-voided layer.

The Examiner relies upon Touhsaent for its apparent teaching of a metallized multilayer composite comprising a core layer and two outer skin layers and a metal layer on the surface of one of the skin layers. Applicant does not contend to be the first one to invent a multilayer film including a metal layer on the outer surface. However, applicant does claim to have made a patentable invention in a metallized label having a unique structural combination of elements to permit the effective use of a cold glue adhesive on the label, and yet still achieve excellent brilliance or gloss in the metal layer. This objective is not remotely addressed in the primary patent to Bourdelais et al., and the secondary patent to Touhsaent does not cure the defects in the Bourdelais et al. teaching.

Claim 11 is dependent upon claim 1 and specifies that the internal core layer is free of void-

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creating additives. In distinction, the laminate disclosed in the Bourdelais et al. '034 patent requires a voided internal core. In addition, Touhsaent states that if it is desired to produce an opaque film, the internal core layer can be voided.

Thus, both Bourdelais '034 and Touhsaent '353 further teach away from the structure specified in dependent claim 11.

In an additional rejection of the claims the Examiner combined Bourdelais and Squier et al. publication WO 02/059860. The Squier et al. publication, like the Li et al. '969 patent applied in an earlier rejection, is not a proper reference because its January 26, 2001 priority date is later than applicant's effective filing date of February 8, 2000. This same fact applies to U.S. Publication No. 2002/0146520, which is an equivalent of the '860 publication, and this fact was communicated to the Examiner in the penultimate paragraph of the Information Disclosure Statement dated September 20, 2004. Thus, the rejection predicated on the combination of Bourdelais and Squier et al. is not sustainable.

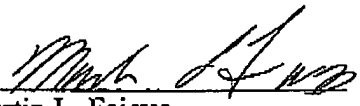
In view of the above remarks, Applicant submits that the rejections advanced by the Examiner are without merit and present clear errors in fact and in law and that this application should be passed to issue.

Respectfully submitted,

CAESAR, RIVISE, BERNSTEIN,
COHEN & POKOTILOV, LTD.

January 19, 2006

By


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Please charge or credit our
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